

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Implementation of Section 26)
of the Cable Television)
Consumer Protection and)
Competition Act of 1992)
Inquiry into Sports Programming)
Migration)

PP Docket No. 93-21

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To: The Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYCOMMENTS OF TRIBUNE BROADCASTING COMPANY

Tribune Broadcasting Company ("Tribune") submits these comments in response to the Commission's Notice of Inquiry in this Docket, FCC 93-77, released February 9, 1993 ("Notice").

Tribune has a profound interest in the subject of this inquiry. Tribune has invested heavily in local sports telecast rights: in 1993, seven Major League Baseball teams' games will be televised in their home markets by Tribune stations, all of which are independent stations. Tribune stations also carry the games of four NBA clubs and college basketball games, including DePaul University and Tulane University. In the past, they have also carried selected hockey and pre-season NFL games. Tribune's parent company also owns the Chicago Cubs.

Four of Tribune's television stations are "super-stations" whose signals are retransmitted by carriers and made available to cable systems and home satellite viewers.

Tribune submits these brief comments to respond to several questions the Commission has raised in the Notice.

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Tribune assumes that detailed nationwide statistical data will be provided by the sports leagues themselves.

A. The Scope of this Inquiry Should be Confined.

Tribune respectfully questions the far-reaching scope of the Notice. Section 26 of the Cable Television Consumer Protection and Competition Act of 1992 is entitled "Sports Programming Migration Study and Report." The statute directs the Commission to study carriage of sports events by broadcast stations, cable networks and pay-per-view services, and requires a study on trends in migration from broadcast to cable and pay-per-view carriage. Id., § 26(a).

The 17-page Notice, however, goes well beyond this. It inquires into detailed private contractual and territorial arrangements, delves into issues of gate receipts, licensing and superstition growth over the last 13 years, and other issues that seem tangential at best. We urge the Commission to keep its eye on the ball, focusing on the issue of the movement of televised professional sports from free broadcast media onto subscription or pay media.

B. Superstations.

The Notice raises numerous questions about superstations. As noted above, four of Tribune's television stations currently are retransmitted by satellite carriers. All of them carry professional sports. WGN-TV, Chicago carries the Chicago White Sox, Cubs and Bulls; WPIX, New York carries the New York Yankees; KWGN-TV, Denver carries the Denver Nuggets and Colorado

Rockies, and KTLA, Los Angeles carries the California Angels and Los Angeles Dodgers.*

Despite the nationally available signals that are made possible by the cable and home-satellite compulsory licenses,** superstations must be viewed as local media. Tribune's stations have acquired broadcast rights from local clubs, not from the leagues on a national basis. Their broadcasts, of course, are directed to the partisan hometown fan. No effort is made to provide a "disinterested" call of the game, unlike the national television and cable networks.*** Finally, the advertisers attracted to these telecasts predominantly seek to target local viewers for their local patronage.

It is important to note that these stations did not become the flagship stations of professional sports franchises because they are superstations. Their local association with their home teams long predated the advent of satellite delivery of television signals. The Cubs have been carried by WGN-TV since 1948, the station's first year on the air, and through decades of ownership by the Wrigley family. WGN-TV also

* WGN-TV's availability as a superstation began in 1978. WPIX has been available via satellite since 1984, KWGN-TV since 1986 and KTLA since 1988. All four stations had been available to distant viewers via microwave networks operated by regional carriers for many years before. With the exception of WGN-TV, these stations' cable viewership continues to be primarily regional, rather than national in scope.

** 17 U.S.C. §§ 111, 119.

*** The Commission has recognized that opposing teams' local flagship telecasts, each oriented toward its home audience, result in legally distinct programs that occasionally compete with one another for viewers. Major League Baseball, 6 FCC Rcd 5573 at ¶ 13 (1991) (denying network nonduplication protection).

televised White Sox games from 1948-67. WPIX has telecast Yankees games every year since 1951, and KTLA has been the home of the California Angels (who have played in Southern California since 1962) for over 25 years. KWGN-TV has been associated with the Denver Nuggets, and with Denver's former AAA baseball team, the Zephyrs (formerly Bears) for decades.

Satellite carriers and their cable-system customers may have chosen Tribune's stations (and others similarly situated) for carriage in part because of their varied sports offerings, as well as their movies, news and children's programs. But the sports franchises' associations with these stations in their home markets had been long since established. The ball clubs were not attracted to the stations because they were superstations.

Tribune's stations have succeeded as flagship stations for sports franchises for a number of reasons. First, the stations emphasize local programming as part of their station identity. Second, unlike affiliates of the four networks, they are independent stations, with no obligation to clear network prime-time programming that may conflict with baseball schedules.* Finally, they have been willing to make long-term investments in popular announcer talent, high-quality production standards and entertaining on-air promotions to attract viewers and advertisers. The charm and personal magnetism of Harry Caray, Phil Rizzuto and, for the first time this year, Vin

* The Los Angeles Dodgers and Philadelphia Phillies both switched to Tribune stations from affiliates of the Fox network in 1993. The Chicago White Sox and Bulls also switched from a Fox-owned station to WGN-TV in 1989-90.

Scully, all build viewer loyalty through entertaining and informative presentations.

C. Statistics.

As noted above, Tribune assumes that the sports leagues will provide comprehensive statistical analysis of the number of games televised by each club, home vs. away patterns, etc. Tribune's experience has been that each local club has its own preferences, and that it is difficult to generalize about the relationship between the number or type (home vs. away) of televised games and attendance, for example. The Dodgers and Angels, for example, traditionally have broadcast only road games, not home games. The Cubs' historic use of daytime baseball and practice of televising of virtually every game as a marketing tool is legendary. The Yankees' schedule on WPIX is almost an even balance of home and away games. The Colorado Rockies have chosen to launch their first season with 80 games, both home and away, on KWGN-TV.

D. Migration to Cable.

Professional baseball and basketball games are available on local cable services in all of the markets in which Tribune stations operate. Though cable reaches fewer viewers than over-the-air television, it benefits from the combination of advertising and subscriber revenues. Yet Tribune stations have not found, despite the growth of cable television, a general

decrease in the number of games on free television* and a corresponding increase in the number of games on pay television.**

The Notice inquires about the New York Yankees' sale of telecast rights to their games to a regional cable program service — Madison Square Garden Network — as a "potential example" of sports programming migration. Id., ¶ 16. There can be no doubt that the cable medium's ability to draw revenue from both advertisers and viewers provided an advantage over free television broadcasters in New York. Particularly in an environment of rapidly escalating player salaries, clubs naturally have been drawn to sources of increased rights fees.

Nonetheless, Yankees games have continued to be carried on free, local television on WPIX in New York, currently by virtue of an agreement between the cable programmer — Madison Square Garden Network — and the station. Both private parties, as well as the Yankees, civic leaders and the public generally,

* The Notice inquires whether the possibility of retransmission consent payments will alter the disparity between broadcast and cable television as competing sports media. It clearly is too early to tell, given the fact the 1992 Cable Act's retransmission consent provisions will not take effect until October 1993. Perhaps this matter can be revisited prior to the Commission's final report to Congress next year.

** There are, however, some league rules that limit the number of games on free television. The NBA, for example, will allow a team to televise all 82 of its regular-season games on cable television. But it may only place half — 41 — on broadcast television. In addition, the Major League Baseball/ESPN contract precludes all broadcast (but not cable) television on Wednesday nights, when ESPN has an "exclusive." A similar rule applicable only to "superstations" has been written into the NBA's contract with TNT, and also exists as a matter of league policy. See Chicago Prof'l Sports Ltd. Partnership v. National Basketball Ass'n, 754 F. Supp. 1336, 1343-44 (N.D. Ill. 1991), aff'd, 961 F.2d 667 (7th Cir.), cert. denied, 113 S. Ct. 409 (1992).

recognized the importance of free public access to a substantial complement of Yankees games each year, to stimulate fan as well as advertiser interest. Tribune is hopeful that market forces

recognizing that economic forces drive these transactions.

Tribune does not recommend specific legislative or regulatory